

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

AUG 23 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2007-0116-PR
	)	DEPARTMENT A
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
EDDIE O. SANTA CRUZ,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-53939

Honorable Carmine Cornelio, Judge

REVIEW GRANTED; RELIEF DENIED

Eddie O. Santa Cruz

Florence  
In Propria Persona

B R A M M E R, Judge.

¶1 In 1997, a jury found petitioner Eddie Santa Cruz guilty of aggravated assault of a minor under the age of fifteen. The trial court sentenced Santa Cruz to an aggravated prison term of twenty years. We affirmed Santa Cruz's conviction and sentence on appeal. *State v. Santa Cruz*, No. 2 CA-CR 97-0457 (memorandum decision filed Oct. 20, 1998). The underlying notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., is apparently Santa Cruz's fifth attempt to obtain post-conviction relief. This

petition for review followed the trial court's summary dismissal<sup>1</sup> of Santa Cruz's notice.<sup>2</sup> We review a trial court's Rule 32 ruling for a clear abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Santa Cruz stated in his notice of post-conviction relief, as he does on review, that he is entitled to relief based on the newly discovered evidence that, four years after he was sentenced, a former prosecutor had promised him that his sentence would be reduced in exchange for information about a defendant in an unrelated matter. *See Ariz. R. Crim P.* 32.1(e) (providing as a ground for relief newly discovered evidence). Santa Cruz argued, without support, that the evidence was newly discovered “[d]ue to the fact that [he] was not [previously] aware of [l]aw that would support this [c]laim.” In its minute entry dismissing the notice, the trial court found that Santa Cruz had “fail[ed] to identify any factual or legal basis or justification for post-conviction relief.”

¶3 The trial court did not abuse its discretion by dismissing Santa Cruz's notice for several reasons. First, Santa Cruz's claim does not properly fall within the scope of Rule

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<sup>1</sup>Although the trial court referred to its ruling as a *denial* of the notice of post-conviction relief, because we customarily refer to this type of ruling as a summary *dismissal*, we refer to it as such in this memorandum decision.

<sup>2</sup>Santa Cruz filed a “Petition for Review” two weeks after the trial court dismissed his notice. He subsequently filed a “Petition for Review On Rule 32,” the petition for review now before us. It appears that he intended the document entitled “Petition for Review” to be a petition for post-conviction relief. However, because Santa Cruz does not argue that the trial court dismissed the notice before he could file his petition, thereby denying him the right to seek post-conviction relief, and because the ruling upon which the petition for review now before us preceded Santa Cruz's filing of the first “Petition for Review,” we do not consider that document on review. Moreover, the “Petition for Review” does not differ materially from the notice upon which the trial court based its ruling in any event.

32.1(e), Ariz. R. Crim. P., as newly discovered evidence. Because his claim relies on events that purportedly took place years after he was convicted and sentenced, those events could not have changed the verdict or sentence at trial, as the rule requires. And, to obtain relief pursuant to Rule 32.1(e), newly discovered evidence must have existed at the time of trial. *See State v. Apelt*, 176 Ariz. 349, 369, 861 P.2d 634, 654 (1993); *State v. Sanchez*, 200 Ariz. 163, ¶ 11, 24 P.3d 610, 613-14 (App. 2001). Because the proffered evidence did not exist at the time of trial, it is not newly discovered. Second, because Santa Cruz apparently raised a closely related claim in his third petition for post-conviction relief, filed in July 2001, he is precluded from doing so again. *See* Ariz. R. Crim. P. 32.2(a)(2). Last, Rule 32.2(b), Ariz. R. Crim. P., permits a trial court to summarily dismiss a notice of post-conviction relief if a petitioner does not set forth “the specific exception [to preclusion] and meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner.” Not only did Santa Cruz fail to substantiate his claim, but it appears that he did, in fact, raise it in a previous petition.

¶4 Accordingly, although we grant Santa Cruz’s petition for review, we deny relief.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge